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File No. O.I.P.C./50.

Legal Department

A BRANCH

Subject:— Opinions under the Indian Penal Code

R. 24 (E)

File No. O.I.P.C. 150

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C O N T E N T S.

Legal Department File No. C. I.P.C./1950.

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8.	O. No.6062 23-5-50	Whether upon the facts - the first of the temple warning the Mahars not to move freely through the fair - a charge under - can be framed.	37-39.
9.	O.No. 16582. 25-11-50.	Re: Article in 'Chitralekha' of 1-7-50 contains imaginary talk between H.M., H & H.D. and his Chabdar Vithoba.	41-42.

GJT. 13.6.56.

5 c.

Office of the R.L.A.

Describing in a public speech the entire Mass of Muslims in this country as "enemies and traitors of this country and never to be trusted under any circumstances" would prima facie be actionable under section 153A of the Indian Penal Code. It would, however, be difficult to sustain successful prosecution only on the basis of this insolated sentence and another later on where the charge of being traitors is repeated. The speech, when read as a whole, does not seem actionable.

Sd/- ....

15-11.

Remembrancer of Legal Affairs.

U.R. to H.D. (Spl.), No. 706-Confl, dated the 16th Nov. 1949.

GJT. 12.6. 4 c.

Office of the R.L.A.

Statement of the Case.

In the speech made by Mr. L.B. Bhopatkar in connection with the death anniversary of the Late Mr. N.C. Kelkar he eulogised the work of the Late Mr. Kelkar and then went on to trace the political history of India right from 1896 to the present day. He also pointed out that Mr. Kelkar started the Swaraj Party in 1926 and that he opposed the Communal Award knowing fully well the establishment of Pakistan and the consequences that would ensure therefrom. Later on at two places at 'A' and 'B' on page 5 of the report of the speech he described the muslims as enemies and traitors of this country. On a reference from Home Department whether the speech was objectionable, the R.L.A. in his opinion No. 706 - Confl., dated the 16th November 1949, (Page 11 ante) advised that describing in a public speech the entire mass of muslims as enemies and traitors would prima facie be actionable under section 153A of the Indian Penal Code but it would be difficult to sustain a successful prosecution only on the basis of isolated sentences in the speech and that the speech read as a whole is not actionable.

H.M. (H. & R.) does not agree with the view expressed by the R.L.A. and requests that the Advocate General should be consulted. The Advocate General is therefore requested urgently to give his opinion in the matter.

Sd/- 23/4/49.
Remembrancer of Legal Affairs.

U.R. to the A.G. No. 731-Confl., dated the 24th November 1949

No. 2 of 1950

Advocate General's Chambers,
High Court,
Bombay, the 7th January 1950.

U.O.R. to the Advocate General of Bombay,

No. 731-Confidential, dated the 24th November 1942.

OPINION.

(1) "He warned the audience to always treat the Muslims as enemies and traitors of this Country and never to trust them under any circumstances."

(2) "There are at present four crores Muslim traitors in this Country."

These sentences, in my opinion on their own clearly have the effect of promoting hatred and enmity between different classes, that is, the Muslims and Hindus. As to whether there was an intention to promote hatred or enmity, it may be said with regard to the second sentence that the only object was to compare the attitude of Government towards the Muslims with that towards the Hindu Mahasabha. But this cannot apply to the first by which the audience is given a definite and direct incitement to adopt a particular frame of mind towards a class, the very basis of which is hatred or enmity.

If the first sentence stood by itself, there would be a clear offence under section 153(a) of the Indian Penal Code, but when the questioned statement is part of a speech of article, then the law is that the whole must be read for the true intention and effect. The occasion here was the anniversary of the late N.C.Kelkar Mr. Khopatkar's speech appears to have been very diffuse and rambling. However, what appears to have been intended was to say that the Government had themselves acted in such a way as to show that they had no confidence in Muslims, that that was a correct attitude and should be adopted by his audience, that the attitude of

Government towards Muslims as now displayed in the Circular was consistent with the warning given by the Hindu Sabha in the past.

If the statement had merely said that Government itself had shown its distrust of the Muslims by reason of the Circular, that would not be actionable. It would be contended that the recommendation to the audience to adopt the same attitude would not therefore be actionable either. A prosecution in a matter of this nature would not ordinarily be launched unless one were assured of success. I am not prepared to say in the circumstances of this case, a prosecution would be bound to succeed.

Sd/- ....

Advocate General.

GJT. 12.6. 4 c.

Office of the R.L.A.

As desired by the Home Department the Advocate General was consulted. A copy of his opinion is sent herewith.

Sd/- ...
11-1.
Remembrancer of Legal Affairs.

U.O. to H.D. (Spl.), No. 28 Confl., dated the 12th January 1950.

GT. 12.6. 4 c.

I have discussed the case with the Chief Police Prosecutor, Mr. Vyavaharkar, and the Inspector of Explosives, West Circle, Mr. Bhavnagri.

2. The licence in this case was issued in the name of the Director of Government Transport Service, Swadeshi Mills Estate. Mr. Satpute, whom it is proposed to prosecute, is a Superintendent, but under section 23(1)(c), having been placed by the holder of the licence in control, he would be liable for the contravention, provided of course the contravention can be brought home to him. The question for consideration is whether Mr. Satpute can be said to have contravened the conditions of the licence or any rule made under section 4 or section 5.

3. As regards contravention of the conditions of the licence, the relevant conditions are as follows:

Condition No.3: Every tank shall be fitted with a vent pipe leading into the open air. The vent pipe shall be securely supported and shall be not less than 12 feet in height. The upper opening shall be covered with fine copper or other noncorroding metal wire gauze of mesh not less than 28 to the linear inch and fitted with wood or the upper opening shall be fitted with an inlet-valve and an exhaust-valve. ~~the approval in writing of the licensing authority.~~

Condition No.8: The petroleum shall enter tank "under seal" and shall not be supplied to the tank between the hours of sunset and sunrise except by a motor tank waggon of a type approved by the Chief Inspector for the purpose and with the approval in writing of the licensing authority.

Note.- A pipe supplying liquid to a tank is under seal to that tank if it is screwed to the tank or otherwise attached so that no liquid or vapour can escape into the air except through the vent pipe fitted to the tank as required by condition 3.

It is Mr. Satpute's contention that there was a constructional defect in the pump and that the construction was defective in the sense that the delivery of petrol/

could never be and never was given without contravening condition No. 8 of the licence, namely, that petroleum shall enter a tank under seal. On the other hand, the letter from the Inspector of Explosives dated the 31st October 1919 says that Mr. Satpute reasoning that he used to keep the dip point open as the vent pipe was not properly working does not appear satisfactory as, on opening the manhole the next day and checking the vent pipe connections, it was found that the vent pipe was in perfectly normal conditions and that a driver in evidence stated, which appears to be the real cause, that he used to keep the dip point open to speed up the delivery by allowing the petrol vapour to escape through the dip point instead of through the vent pipe only. I am giving to understand that the duty of constructing the tank and the outfit lay with the Company and presumably the duty of maintaining that outfit also lay with them. We must verify whether the vent pipe was originally properly connected and was also maintained in working order. Assuming that it was, it still seems that the practice was being followed not only at this pump but at other pumps in Bombay of not closing the dip point so as to speed up filling. The Inspector's report shows that the driver for his convenience of speeding up the filling used to keep the dip point open. If that be so, and if this practice was going on for a long time not only at this pump but at other pumps also, and if the action was primarily attributable to the driver, a court would not be inclined to condemn Mr. Satpute for that default.

4. As regards the contravention of the rules, the relevant rules are 95(2) and 96. They are as follows:

Rule 95(2) - Precautions shall be taken to prevent unauthorised persons from having access to any storage shed or installations.

Below this rule we have the comment by the Chief Inspector of Explosives which says that in general this rule appears to require that any storage shed outside an installation must be kept locked or guarded when not in use and that its installation must be provided with an efficient watchman. Obviously the requirements of this comment were fulfilled. Even while the filling was going on Ramdhum was kept in attendance. Mr. Satpute was not present because he was called away to attend a telephone message. His child who lives on the same premises walked near the pump without knowledge. The precaution required by the rule was sufficiently taken when an attendant was posted on duty and a court would not be inclined to hold Mr. Satpute responsible for contravention of this rule. The other rule is 96 which says that no person under the age of 18 years shall be employed in or allowed to enter any premises licensed under these rules. Here again it was primarily the duty of the attendant Ramdhum to exclude the child and it would be difficult to hold that Mr. Satpute allowed the child to enter when he was not present on the spot.

5. This being the legal position, and having regard to the fact that the fire was really accidental due to the most unforeseen cause of the child of six coming near the pump with a toy pistol and percussion cap, I do not think it just that Mr. Satpute should be prosecuted either for contravention of the rules or

under the Indian Penal Code. Moreover, the facts show that the driver could have averted the seriousness of the fire by closing the valve while on the other hand he aggravated the position by disconnecting the hose.

6. Section 285 as well as 304A of the Indian Penal Code require rashness or negligence. There is no question of rashness here. Culpable negligence is gross and culpable neglect or failure to exercise reasonable and proper care and precaution against injury either to the public generally or to the individual in particular which having regard to all the circumstances out of which the charge has arisen it was the imperative duty of the accused person to have adopted. The facts discussed above are not sufficient for the purpose of establishing culpable negligence on this point on the part of Mr. Satpute.

7. The case against the attendant Ramdhun is slightly stronger, but it does not seem advisable that a mere menial subordinate of that character should be prosecuted for an accidental fire of this kind.

Sd/- .....
17/2.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 2396, dated the 18th February 1950.

GJT. 12.6.4c.

Office of the R.L.A.

The question raised for R.L.A's consideration is whether the article published in the issue of 'Vani' Gujarati weekly dated 10th December 1949 in the columns headed 'Toys of Ashes' by one who styles himself as a wanderer and in the issue of the same weekly dated 24th December 1949 in the same columns by a person who styles himself similarly under the captions "Meeting with one young beggar Woman; Begging of one piece and bargain of life" are obscene and actionable under section 292 of the Indian Penal Code.

Under section 292 of the Indian Penal Code whoever lets to, hires, distributes publicly accepts or in any manner puts into circulation etc. any obscene book, pamphlet, paper etc. shall be punished with imprisonment. As observed by Cockburn C.J. in Wecklain 1963 L.R. 3 Q.B. 637 "the test of obscenity is this whether the tendency of the matter charged as obscenity is to deprave and corrupt those whose minds are open to such immoral things and into whose hands any publication of this sort may fall. If a publication detrimental to public morals and calculated to produce a pernicious effect in depraving and debauching the minds of the persons into whose hands it might come, it would be an obscene publication." Following these observations, the Calcutta High Court in Khirode Chandra Roy Chowdhury Vs. Emperor, 39 Cal. 377, held "If in fact, work was one of which it was certain that it would suggest in the minds of the young of either sex or even to the persons of more advanced age thoughts of a libidinous character then

its sale was a criminal offence and it was immaterial that the defendant had in view an ultirior object which was innocent or even laudable."

In the article appearing in the issue of Veni dated 24th December 1949 under the captions "Meeting with one young beggar woman - Begging of one piee and bargain of life", the author has described how an innocent young and helpless girl was raped in the presence of a blind mother. In narrating this story, the author has stated "I have been hungry of young girls for hundreds of years. I have embraced the warmth of throbbing hearts and trembling shaking hands within my vest hands by spending from one anna to one thousand rupees. I have become a beastly man. I can ruin the life of anybody. I am not sorry for that". He goes on stating how he met an innocent young girl who was begging for maintenance and how he caught her hand and took her to a sweetmeat shop and then went to her hut and enjoyed her during the night in thepresence of her blind mother. In the second article appearing in the issue of Veni dated 10th December 1949 a story is published about a licentious man addicted to racing, liquor and debauchery. It is in the nature of his confession as to how he passes his Saturday nights after races are over. It isstated in this article "I get extraordinary pleasure in committing crimes. I am never at my place at night on Saturdays, When black clouds over shadow, when some girl is serving you with a cup of liquor hiding her youth in a tight blouse, I think there

no crime in tking liquor. I have intentionlly invited

such crimes in my life." The auther then goes on describing howhe enjoyed a Saturday night with a prostitute who happened to invited him onher way home. These articles are certainly of a libidinous character exciting the most impure thoughts and inflaming passions. They have the effect of depraving and debauching the minds of persons into whose hands they may fall. Immorality seems to be the theme of these articles and the pleasures of a licentious life are commended. In my opinion these articles are calculated to excite in the readers the most impure thoughts and lust and as such are obscene and actionable under section 292, Indian Penal Code.

Sd/-
9/2.

Remembrancer of Legal Affairs.

U.R. to H.D. (Pol). No . 2008, dated the 10th February 1956.

GJT.12.6. 4 c.

Office of the R.L.A.

The report now received from the Sub Inspector of Police and the opinion of the Public Prosecutor thereon shows conclusively that no case can be sustained for an offence under section 218. In fact, this further investigation shows that the very first allegation in the original petition that in Nimbargi there was no production of price and wheat, although these grains have been imported on the strength of a certificate obtained for that purpose, is false and baseless. Similarly, it has now been demonstrated that in one case full levy was paid and in the three cases, no levy was payable with the result that no question of loss or injury to the public or to any person can possible arise. The Public Prosecutor has, therefor, rightly taken the view that there is no case for the offence under section 218.

2. The only question which now remains for consideration is whether a prosecution for the offence of cheating can be successfully sustained, in that permits were obtained from the Mamlatdar and the Rationing Officer on the basis of an entry as tenant which was falsely made for the purpose of obtaining such permits. The making of the entry must be connected from the very beginning with the idea of obtaining permits. The deception must consist in getting the entry falsely made for the purpose of eventually securing the permit. The burden of proof will naturally rest upon the prosecution. There is no direct evidence to prove the falsity of the entry. All the persons concerned including

the accused persons who made the entry will not support the prosecution. The prosecution can at best depend upon certain circumstances, such as the fact that these four merchants who live in Sholapur could not possibly cultivate lands in Nimbarai in their capacity as tenants. That, however, is not the legal effect of the entry. The entry merely describes them as tenants under mode (rest) No. 3, which according to the Manual of Revenue Accounts, is the mode of paying rent in cash. There is nothing in law to prevent a person living in a town from taking a land on lease in a village at some distance from that town and get it cultivated with the help of salaried servants or otherwise so long as he takes the responsibility for cultivation as a tenant and makes himself actionable to the landlord for the payment of the cash rent under mode No. 3. It may even be, as reported by the Police Sub Inspector, that the very original landlords of these lands may have put themselves in the position of servants under these merchants. That circumstances is a very common occurrence between sawkars and debtors. Personal cultivation by the tenant or even under his own supervision is not a legal necessity for the purposes of the entry. We cannot, therefore, depend merely on these circumstances to prove the falsity of the entry and hope to establish therewith the further fact that the false entry was made for the specific purpose contemplated in advance of securing permits on the basis of such entry.

permits on the basis of such entry.

3. In my opinion, therefore, there is very little prospect of success for a prosecution for cheating in this case. In these circumstances, Revenue Department may consider whether it is worthwhile granting sanction. If it is decided eventually to grant sanction, L.D. will supply an appropriate order for that purpose.

Sd/- ...

Remembrancer of Legal Affairs.

U.R. to R.D. No. 5680, dated the 26th April 1950.

GJT. 12-6. 4 c.

Office of the R.L.A.

The question referred to the R.L.A. for opinion by the Home Department is whether the Gujarati publication, a social novel, named "Sari Jati Rati" is an obscene publication.

2. The books in question consists of two parts. The second part described the life of one Dr. Kalyan as passed by him in Europe and the first part describes the life of Dr. Kalyan as passed in India. Other characters are also painted in each of the parts. The substance in short of the story as narrated in the books is as under:-

A young medical student named Kalyan goes to England for further studies. He comes in contact with several women, with whom he falls in love, one after another and finds each different from the other. As soon as he comes in contact with a new woman, he manages to get rid of the old one. After finishing his studies he tries to settle in London and begins his medical practice but without success. The death of his father and the lack of funds finally compel him to come to India, after seven years of stay in England. After several years of practice his earnings rise considerably, and he gets himself well-established in his profession. He comes in contact with Mona, a romantic rich window of about forty years. Both fall in love with one another. Dr. Kalyan, before he went

to England, had a love-affair with Shyama, whose husband was a sickling. But later on both forget each other. Nandlal, the accountant-cum-manager of Seth Thakordas develops intimate relationship with Chandan, the wife of his master Thakordas and Shyama, the Sister-in-law of Seth Thakordas and gradually becomes the whole and sole in household affairs as well as business affairs of Seth Thakordas. He wins the favour of Chandan, Seth Thakordas's wife and Shyama, her sister, and manages clandestinely to have intimate relations with both of them. Seth Thakordas being a scrupulous and religious-minded person has no suspicious. Seth Thakordas's daughter, Padma Mena's daughter Yamuna and Barrister Shyamlal son Sudhir study together in the same college Sudhir and Padma love each other. Later on Sudhir is attracted towards Yamuna and her mother Mena. Mena according to the information gathered from her native placed and from a saintly person named Ramchand from Nasik, by Barrister Shyamlal turns out to be the lost sister Radha of Barrister Shyamlal himself, the father of Sudhir.

3. Although the book is described by the author as a social novel he has, in fact, laid before the reader a picture of immoral and adulterous ways of life. The characters in the book not only flout the established moral code of society but openly carry on adulterous intercourse which is described in vivid language in many places. The description of such love affairs at pp. 18 to 21, 36 and 37, 110, to 112, 135

to 131 of the first part and at pages 74 to 78, 96 to 100, 122 to 123, 126 to 128 of the second part, are instances in point. Apart from the underlying immoral tone of the book the descriptions themselves are such as would excite libidinous thoughts in the mind of an average reader. On the background of the general tenor of the book they undoubtedly have a tendency to deprave and corrupt those whose minds are open to such immoral influences and into whose hands the publication of this sort may fall. Even judged as a work of literary fiction having regard to the depiction of characters the general purpose and the tenor of the book it would seem that the book would be covered by the well recognised test of obscenity (compare 60, Cal. 901).

Sd/- ....
24/5.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 351-Confl., dated the 25th May 1950.

GJT. 12.6. 4c.

Office of the R.L.A.

Indian Penal Code (Act. XLV of 1860) Sec. 506.

In this case the priest of the temple rebuked the Mahars for their so-called untraditional conduct in moving freely through the fair and told them that for such action they would fall a prey to the wrath of the God Kalabhairav. The next day he called all the Mahars in front of the temple and again warned them for their misbehaviour.

2. The question raised for R.L.A.'s consideration is: whether upon these facts a charge under section 506 of the Indian Penal Code can be framed.

3. Section 506 of the I.P. Code provides that "Whoever voluntarily causes or attempts to cause any person to do anything which that person is not legally bound to do or to omit to do anything which he is legally entitled to do by inducing or attempting to induce that person to believe that he or any person in whom he is interested will become or will be rendered by some act of the offender an object of Divine displeasure if he does not do the thing which it is the object of the offender to cause him to do or if he does the thing which it is the object of the offender to cause him to omit act." The underlined words make it obvious what the illustrations emphasise that there must be some act of the offender by means of which the person concerned is made the object of Divine displeasure. Merely warning a person or invoking a curse upon him that he will be the objet of Divine dis-

Office of the R.L.A.

The article published in the issue of a Gujarati periodical named Chitralekha' dated 1-7-50 contains some imaginary talk between H.M., M. & R.D. and his Chobdar Vithoba. In thisarticle it is alleged that the Chobdar Vithoba has enormous influence with the Hon'ble Minister M. & R.D. and certain instances are narrated as illustrative ofthe said influence. One of the instances mentioned is that Vithoba receivesa gift or a present of an umbrella from a person who get an interview with Hon'ble the Minister through Vithoba. It is stated therein that Vithoba defended theacceptanceof the gift or the present on the grounds that it would not amount to a bribe when it was given, not before doint the wrk, but after the work is done. Apart from whether or not such acceptance amountsto a bribe, the fact remains that Vithoba did receive a present or a ~~big~~ gift from the person f whom he secured an interview with the Hon'ble Minister.

2. No servant of Government can accept any present or gift except with the leave of Government (vide section 161 ofthe I.P.C.). The imputation that Vithoba did receive a gift for the work done for a person who sought an interview with the Hon'ble Minister would certainly be a reflection on the character of Vithoba and such reflection would make his conduct despicable and make him unfit to be the Chobdar ofthe Hon'ble Minister and to be in Government

Service. Consequently it appears that the artifle is defamatory of Shri Vithoba. However, for an action either criminal or civil, it will have to be proved that the aforesaid imputation isuntrue. Since, this relates to a talk between the Hon'ble Minister and Vithoba, perhaps the court may insist on the evidence of the Hon'ble the Home Minister. In viewofthis, it is for Government to consider wither it would be advisable to ask Shri. Vithoba to take action, either Civil or Original. On the whole, the writing, which is in a light vein, does not seem to call for serious notice.

Sd/- ....

23-11.

Remembrancer of Legal Affairs.

U.R. to H.D. No. 16582, dated the 25th November, 1950.

GJT. 12-6. 4 c.

pleasure cannot be an offence under section 508. It is the act of the offender by means of which he seeks to invoke Divine displeasure which forms the gravamen of the offence. This view has also received judicial support in the case of Tenumal (1944) Karachi, 146 where it was held that a mere threat at large that if a debt is not paid then by operation of Divine law displeasure will fall upon the debtor is not sufficient to attract this section, because it contemplates that the person intended to be harmed will be made the object or Divine displeasure by some act of the offender.

4. The view taken by the District Superintendent of Police, Kolaba, is, therefore, correct.

Sd/- ....

22/5.

Remembrancer of Legal Affairs.

U.R. to E.D. No. 6063, dated 23rd May 1950.

GJT. 12.6. 4 c.